

1 JUDGE SIPPEL: Do you think that, do you have a
2 basis for saying that this is wrong?

3 THE WITNESS: Well, I mean, he may have, it may
4 have come out in our conversation that we would file STAs
5 generally, but it very well may be that we didn't, well --

6 JUDGE SIPPEL: I mean, either he has it totally
7 wrong or he was misled on April 26th if he hasn't talked to
8 you about this. He being Mr. Nourain.

9 THE WITNESS: As I recall, in filing STAs, in
10 starting to file STAs that had been held up by Time Warner's
11 petition, we focused on specific paths. And the reason we
12 focused on specific paths was because those were paths that
13 needed -- our justification was, was that people, there were
14 subscribers who were waiting for service. So we tied these
15 STAs to specific paths rather than to specific or to just
16 general applications. So it's quite possible that Behrooz
17 had said to me, you know, file all of these STAs and then I
18 came back and said, well, which ones are, which ones will
19 you be, which ones do you have contracts for? Now, as I
20 recall actually that was much, that was much later. So I'm
21 not certain that I spoke to him about that in this
22 conversation, but that's one reason why 2727 Palisades
23 Avenue didn't appear in the STAs.

24 BY MR. HOLT:

25 Q So, let me understand you correctly. In

1 formulating this decision to file the STAs, you specifically
2 identified paths that you wanted to cover with STAs.

3 A Yes.

4 Q And was that a -- did you -- and you say that the
5 justification that you were going to use was that
6 subscribers were waiting for service?

7 A It's included in the STA, yes. That's our
8 justification.

9 Q So you went through a process prior to May 4, 1995
10 of talking with Mr. Nourain about the issue whether or not
11 subscribers were waiting for service.

12 A I'm really not sure. I'd have to look at the May
13 4th STAs. I know this is the process much later and I'm
14 theorizing as to what happened. So I don't know.

15 Q Let's do that. I don't want to lead you astray in
16 any way. So let me refer you to the May 4th STAs which are
17 Time Warner Cablevision Exhibit 17. If you want to turn to
18 that exhibit, I believe you testified earlier that the STAs
19 were similar. But for purposes of my examination, look at
20 the first one here which apparently relates to, identifies
21 20 West 64th Street, One Lincoln Plaza, at the top. Do you
22 have that before you?

23 A Yes.

24 Q Okay. Why don't you take a moment to review that?

25 A Okay.

1 JUDGE SIPPEL: Off the record

2 (Whereupon, a brief recess was taken.)

3 JUDGE SIPPEL: All right. We're back on. Have
4 you got it covered? You've read it?

5 THE WITNESS: Yes, I --

6 BY MR. HOLT:

7 Q Okay. Does that refresh your recollection?

8 A Yes, it does.

9 Q Okay. Then can you relate to me what the process
10 was deciding which paths would be identified?

11 A As you can tell, no paths are identified in this
12 STA application, no specific paths. This is only identified
13 by FCC file number and call sign.

14 Q But I understand that you went through a process
15 of discussing with Mr. Nourain on a path-by-path basis, you
16 discussed with Mr. Nourain on a path-by-path basis which of
17 the paths were receiving service and which were not.

18 A Well, I'll have to clarify that this, that this
19 process happened much later. This did not -- this process
20 of speaking with someone at Liberty as far as what buildings
21 were receiving services, were receiving service, this
22 happened much later. It did not happen in connection with
23 the May 4th STA. As you can see, it refers only to a
24 specific application, only to an application. It does not
25 refer to specific paths. It's only when the Commission

1 wrote the paths in on the STA themselves.

2 JUDGE SIPPEL: Are those the paths? Where are the
3 paths written in on the STA?

4 THE WITNESS: Over on the side.

5 JUDGE SIPPEL: On the left hand margin?

6 THE WITNESS: Yes.

7 JUDGE SIPPEL: Well, what would prompt the
8 Commission to write those in?

9 THE WITNESS: I can't speculate on that. I don't
10 know.

11 BY MR. HOLT:

12 Q Was it the Commission's practice at this time to
13 identify the paths?

14 A Yes, these would have been the paths that would
15 have been associated with that file number.

16 Q And was that the Commission's practice to identify
17 paths like that on granted STAs prior to the --

18 A I don't recall.

19 Q Just to complete my question, was prior to the
20 time that this STA was granted, the first STA, Exhibit --
21 Time Warner Cablevision Exhibit 17.

22 A I don't recall.

23 Q So getting back to this conversation with
24 Mr. Nourain, he provided you with a list of paths that he
25 wanted you to file STAs for. You didn't go through any

1 process of identifying paths -- let me withdraw and
2 rephrase. When Mr. Nourain provided you with this list of
3 paths to file an STA for, you didn't discuss with him
4 whether or not there existed any basis for making a special
5 showing to the Commission that the STAs should be granted --

6 MR. BEGLEITER: Can you repeat the question?

7 MR. HOLT: Well, I'll ask it.

8 BY MR. HOLT:

9 Q At the time you and Mr. Nourain discussed the
10 filing of STAs for specific paths prior, to your April 28th
11 memo --

12 A Prior? I didn't have discussions -- well, all
13 right. Just prior. The discussion that I had just prior.

14 Q Immediately preceded your April 28th memo.

15 A Yes.

16 Q Did you discuss with Mr. Nourain what sort of
17 showing would be made to justify to the Commission granting
18 those paths?

19 A No, I did not.

20 Q If you turn to the second page, your Time Warner
21 Cablevision Exhibit 35, again, this is the Nourain memo.

22 Q Look at the bottom of the page. It says emission
23 designator correction had already been submitted to FCC. Is
24 that statement correct --

25 A Yes.

1 Q -- to your knowledge -- okay.

2 A Yes.

3 Q And it also indicates according to our FCC lawyer,
4 we expect to receive the final licenses within the month of
5 May. Can you explain, I presume, are you aware of any other
6 FCC lawyer Mr. Nourain was talking to around this time
7 period other than you?

8 A No.

9 Q Can you explain to me why Mr. Nourain would have
10 been reporting to his boss, Howard Milstein, on April 26th,
11 1995 that his lawyer, meaning you, had advised him that they
12 could expect to receive the final licenses within the month
13 of May?

14 A No.

15 Q The paths listed above.

16 A I have no, I have no reason or I have no idea how
17 he came to that conclusion.

18 Q So based on your understanding, Mr. Nourain was
19 reporting untrue information to his boss?

20 A Yeah, I mean, I can't comment on what Mr. Nourain
21 was doing, but according to this, that was, that was
22 certainly not the case at the time.

23 JUDGE SIPPPEL: Do you have much more, Mr. Holt?

24 MR. HOLT: I actually do, Your Honor. I've got
25 several other lines of questioning. What would you prefer

1 me to do?

2 JUDGE SIPPEL: Well, it's five to 5:00. Let's, we
3 have to, we can't stay here indefinitely. Let's go off the
4 record and find out what's going on.

5 (Whereupon, a brief recess was taken.)

6 JUDGE SIPPEL: For scheduling purposes we're going
7 to, we're completing now at 5:00 p.m. We're going to pick
8 up tomorrow morning at 9:30 with this witness and we will
9 then start with Mr. Peter Price after this witness is
10 completed. We terminate the session, this week's session at
11 the end of the day tomorrow and we pick up on Tuesday
12 morning at 9:30 with the -- and then to complete Mr. Price's
13 testimony, we then pick up with Mr. Ontiveros at 9:30 on
14 Wednesday morning and we expect to finish this by the close
15 of business on Wednesday. You will have an opportunity, of
16 course, to argue Monday morning as to whether or not there
17 are other witnesses. But this is, I don't see anything
18 beyond Mr. Ontiveros based on what I've heard so far.

19 MR. BEGLEITER: Judge, can it be done Tuesday
20 morning because Monday's a holiday?

21 JUDGE SIPPEL: Tuesday morning. Yes, if I said
22 Monday, forget about Monday. It's Tuesday of next week. I
23 mean, nothing starts before Tuesday morning.

24 MR. BEGLEITER: And then, Your Honor, I hate to
25 mention these things, but Tuesday we're already scheduled to

1 do sort of a document session in which the other parties
2 were going to indicate whether they're going through the
3 documents, which ones are significant and which ones require
4 further questioning. Has that been pushed off now maybe to
5 Thursday?

6 JUDGE SIPPEL: Well, I really hadn't, I really
7 hadn't focused on that. I hadn't focused on that. Let's go
8 off the record for a minute again.

9 (Whereupon, a brief recess was taken.)

10 JUDGE SIPPEL: Through oversight on my part, we
11 forget to include in this scheduling what we had previously
12 included with respect to giving Mr. Beckner and Mr. Holt and
13 whoever an opportunity to address the status of the
14 documents that had been received recently in this case and
15 also to be sure that we got a confirmation I guess from
16 Liberty's attorneys that we really do have everything that
17 there is to have. Mr. Nourain is up in New York still
18 supposedly looking for more documents.

19 So in any event, that will bring that up to date
20 on the documents. Mr. Begleiter, you can have an
21 opportunity, I'm sorry, Mr. Beckner, you can have an
22 opportunity to ask for additional witnesses at that time.
23 I'll take that under advisement. I will rule as rapidly as
24 I can.

25 //

1 The key thing being that we get that witness, Mr.
2 Price, back on the stand as quickly as we can Tuesday
3 morning. That's it. We're in recess until 9:30 tomorrow
4 morning. Thank you.

5 (Whereupon, at 5:03 p.m. the hearing was recessed
6 until January 15, 1997 at 9:30 a.m.)

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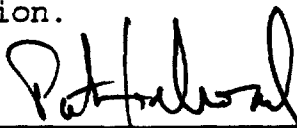
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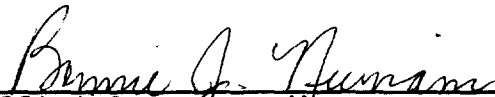

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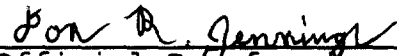

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